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ECHOSTAR SATELLITE LLC AND
ECHOSTAR TECHNOLOGIES CORPORATION

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

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| In re<br><br>ACACIA MEDIA TECHNOLOGIES CORPORATION | Case No. 05-CV-1114 JW<br><br>**DECLARATION OF DAVID M. HYMAS IN SUPPORT OF SATELLITE DEFENDANTS' MEMORANDUM RE THE DEFINITIONS OF TERMS IN CLAIMS 41-45 OF THE '992 PATENT**<br><br>Date: June 2, 2006<br>Time: 9:00 a.m.<br>Courtroom: 8, 4th Floor<br>Judge: Hon. James Ware |

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I, DAVID M. HYMAS, declare and state:

1. I am an associate at Morrison & Foerster LLP, counsel of record for defendants EchoStar Satellite LLC and EchoStar Technologies Corporation in this case. Unless otherwise stated, I have personal knowledge of the matters stated below and, if called as a witness to testify could and would do so. I make this declaration in support of the Satellite Defendants' Memorandum re. the Definitions of Terms in Claims 41-45 of the '992 Patent.

2. Attached hereto as Exhibit A is a true and correct copy of the applicants' September 30, 1991, Amendment, which is part of the '992 patent's prosecution history.

3. Attached hereto as Exhibit B is a true and correct copy of the December 10, 1991, Second Office Action, which is part of the '992 patent's prosecution history.

4. Attached hereto as Exhibit C is a true and correct copy of the December 20, 1991, Examiner Interview Summary Record, which is part of the '992 patent's prosecution history.

5. Attached hereto as Exhibit D is a true and correct copy of the applicants' December 26, 1991, Amendment, which is part of the '992 patent's prosecution history.

6. Attached hereto as Exhibit E is a true and correct copy of the February 5, 1992, Notice of Allowability, which is part of the '992 patent's prosecution history.

7. Attached hereto as Exhibit F is a true and correct copy of this Court's *Markman* Order dated July 12, 2004, and filed in *Acacia Media Technologies Corp. v. New Destiny Internet Group, Inc., et al.,* No. 02-1040 (C.D. Cal.).

8. Attached hereto as Exhibit G is a true and correct copy of the applicants' June 17, 1991, Petition to Make Special, which is part of the '992 patent's prosecution history.

9. Attached hereto as Exhibit H is a true and correct copy of *Webster's Third New International Dictionary*, at 1575 (1993), regarding the definition of the word "one."

10. Attached hereto as Exhibit I is a true and correct copy of *The American Heritage Dictionary of the English Language*, at 1228-29 (4th ed. 2000), regarding the definition of the word "one."

11. Attached hereto as Exhibit J is a true and correct copy of *Merriam Webster's Collegiate Dictionary*, at 811-12 (10th ed. 1998), regarding the definition of the word "one."

12. Attached hereto as Exhibit K is a true and correct copy of U.S. Patent No. 5,550,863, issued on August 27, 1996.

13. Attached hereto as Exhibit L is a true and correct copy of the applicants' May 13, 1994, Amendment, which is a response to the January 13, 1994, Office Action and which is part of the '863 patent's prosecution history.

14. Attached hereto as Exhibit M is a true and correct copy of the December 30, 1994, Third Office Action from the PTO, which is part of the '863 patent's prosecution history and which, among other things, rejected claims 33 and 34 from the application that eventually issued as the '863 patent.

15. Attached hereto as Exhibit N is a true and correct copy of U.S. Patent No. 5,133,079, issued to Ballantyne, *et al.* on July 21, 1992.

16. Attached hereto as Exhibit O is a true and correct copy of the patentees' May 30, 1995, response to the December 30, 1994, Third Office Action, which is part of the '863 patent's prosecution history.

17. Attached hereto as Exhibit P is a true and correct copy of Acacia's Opening Claim Construction Brief dated January 8, 2004, and filed in *Acacia Media Technologies Corp. v. New Destiny Internet Group, Inc., et al.*, No. 02-1040 (C.D. Cal.), as part of the *Markman I* round of claim constructions.

18. Attached hereto as Exhibit Q is a true and correct copy of the *IEEE Standard Dictionary of Electrical and Electronics Terms*, at 23 (4th ed. 1988), regarding the term "address."

19. Attached hereto as Exhibit R is a true and correct copy of the *Dictionary of Computing*, at 7 & 9 (3d ed. 1990), regarding the terms "address" and "addressable location."

20. I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct and that this declaration was executed on May 8, 2006, in San Francisco, California.

David M. Hymas